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Court : Himachal Pradesh

Decided On : Jun-22-1972

Reported in : AIR1972HP144

Judge : R.S. Pathak, C.J.

Acts : Himachal Pradesh (Courts) Order, 1948

Appeal No. : Second Appeal No. 22 of 1969

Appellant : Sunder

Respondent : Kirpu and ors.

Advocate for Def. : Chhabil Dass, Adv. (for Nos. 1 and 3) and; O.P. Sharma, Adv. (for No. 2)

Advocate for Pet/Ap. : Kanshi Ram Sharma, Adv.

Disposition : Appeal dismissed

Judgement :

R.S. Pathak, C.J.

1. This second appeal arises out of a suit for possession by redemption.

2. The trial court passed a preliminary decree in favour of the plaintiff declaring that the amount due to the defendants on account of a mortgage was Rs. 470/- and made an order for delivery of possession on payment of that sum, An appeal was filed by the defendants, and the appeal has been dismissed by the learned District Judge, Bilaspur. Against that decree the present appeal has been preferred.

3. At the outset, learned counsel for the respondents has raised a preliminary objection. He urges that the appeal is not maintainable because the decree under appeal is a decree affirming the trial court decree and, therefore, the appeal does not lie under paragraph 32 (1) (b) (i) of the Himachal Pradesh (Courts) Order, 1948, and inasmuch as the value of the suit is less than Rupees 1,000/- and the decree under appeal does not involve directly any claim to, or question respecting, property of the value of Rs. 1,000/- or upwards, it does not lie under paragraph 32 (1) (b) (ii) of that order. The objection is sound and must be upheld.

4. Paragraph 32 (i) (b) contemplates a second appeal in a land suit:

'(i) if the value of the suit is two hundred and fifty rupees or upwards, or, the decree involves directly some claim to, or question respecting, property of like value, and the decree of the District Court varies or reverses otherwise than as to costs the decree of the Court below, or (ii) if the value of the suit is one thousand rupees or upwards, or the decree of the District Court involves directly some claim to, or question respecting, property of like value.'

There can be no doubt that the decree under appeal is a decree of affirmance. The trial Court decreed the suit and the lower appellate court dismissed the appeal in toto. Learned counsel for the appellants contends that the decree is one of variance because while the trial court decreed the suit on the basis of the mortgage of 1985 Bk, the lower appellate court affirmed the decree on the basis of a mortgage of 1975 Bk. It seems to me that the ground upon which the decree has been affirmed is immaterial. What is relevant is whether the decree of the trial court has been varied by the decree of the lower appellate court. As I have already pointed out the appeal was dismissed in its entirety. Then, it is urged for the appellants that the decree of the lower appellate court involves directly some claim

to, or question respecting, property of the value of Rupees 1,000/- or upwards and, therefore, the case falls under paragraph 32 (1) (b) (ii). As to that, there is no definite material on the record upon which a decision can be taken in that behalf. At the very outset, when the appeal was filed, the value of the appeal for the purpose of jurisdiction was shown by the appellants as Rs. 470/- and a report was made by the office of this court that the appeal appeared to be incompetent. The report was made on March 14, 1969. No attempt has been made to produce material for the purpose of showing that the appeal was competent. In the circumstances, the appeal is dismissed as not maintainable. There is, however, no order as to costs.

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